



European Securities and  
Markets Authority

# Response Form to the Consultation Paper on guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure



## Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 September 2022**

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**):
3. Please do not remove tags of the type <ESMA\_QUESTION\_DLTM\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_DLTM\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_DLTM\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open Consultations" -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition").

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).



## **Who should read this paper**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to trading venues, CSDs or other entities envisaging to apply for specific permission to operate a DLT market infrastructure.



## General information about respondent

Name of the company / organisation	ECSDA
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	BELGIUM



## Questions

**Q1 Do you have any comments or suggestions regarding the proposed guidelines? If so, please provide arguments supporting your comments and suggestions.**

<ESMA\_QUESTION\_DLTM\_1>

**Transparency and standardisation are key in the process of granting exemptions**

The process to request an exemption in the DLT Pilot Regime (DLTPR) must be consistent, transparent and standardised across NCAs, leading otherwise to an unharmonized NCA approach, regulatory arbitrage, level-playing field and possibly, interoperability concerns.

Further to Articles 8(4), 9(4) and 10(4) DLTPR, ESMA has provided clear and satisfactory standard forms, formats and templates. However, ECSDA wishes to anticipate discrepancies faced by CSDs when requesting a passport in different EU Member State jurisdictions.

Specifically, the coordination and relationship between NCAs and ESMA when deciding on an application must be clear and standardised for all NCAs. Moreover, it is essential that the level of information and detail requested by each NCA remains levelled among Member States. With regard to a legislative instrument choice, it is preferable to draft a regulation over a directive. In our view, it would cater to more consistent handling of exemption applications.

To illustrate ECSDA's concern, Article 8(3) DLTPR outlines that the NCA shall submit "*any compensatory measures proposed by the applicant or required by the competent authority*". ECSDA fears that the lack of standardisation with respect to the processes that NCAs will assess 1) the need for compensatory measures and 2) compensatory measures proposed by the applicant, will lead to diverging procedures and compensatory requirements implemented by each Member State NCA.

An unharmonized implementation of the DLTPR would undermine the policy objectives and create regulatory arbitrage and an unlevel playing field.

On this basis, ECSDA suggests that ESMA provides standardised guidelines to NCAs regarding the relevant degree of information when granting an exemption. Furthermore, ECSDA suggests the need for consistent guidelines as to the methodology in identifying and granting compensatory measures by each NCA.

<ESMA\_QUESTION\_DLTM\_1>

**Q2 Is any clarification needed in respect of the content of certain items listed in the tables below? If so, please indicate.**

<ESMA\_QUESTION\_DLTM\_2>

The proposed guidelines seem to be using indistinctively the terms 'DLT financial instrument' and 'crypto-asset'.

For clarity reasons, it would be appropriate to specify the term used across the whole document.

<ESMA\_QUESTION\_DLTM\_2>

**Q3 Do you consider more specific forms or templates should be developed for certain items? If so, please specify.**

<ESMA\_QUESTION\_DLTM\_3>

TYPE YOUR TEXT HERE



<ESMA\_QUESTION\_DLTM\_3>